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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Market Entry and Regulation)
of Foreign-affiliated Entities)

IB Docket No. 95-22
RM-8355
RM-8392

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OPPOSITION

MCI Telecommunications Corporation (MCI), pursuant to Section 106(g) of the Commission's Rules, hereby opposes the Petition for Reconsideration (Petition) of the Commission's Market Entry Order¹ filed by Telefonica Larga Distancia de Puerto Rico, Inc. (TLD). TLD's Petition requests that the Commission reconsider its decision to apply the Effective Competitive Opportunities (ECO) analysis on routes beyond the "home market" of a foreign-affiliated carrier. For the reasons set forth below, the Petition should be rejected.

In the Market Entry Order (at ¶ 87) the Commission decided that the ECO test should apply not only to destination markets when a foreign carrier has a 25% or greater investment in a U.S. carrier but, also to third countries when there is a carrier under the common control of the investing carrier. This approach, as the Commission correctly noted, is necessary because "anticompetitive dangers exist in such indirect investments which

¹ Market Entry and Regulation of Foreign-affiliated Entities, FCC 95-475 (rel. Nov. 30, 1995) 60 Fed. Reg. 67332 (Dec. 29, 1995) ("Market Entry Order").

are equivalent to those present in a direct investment context."²

Nevertheless, TLD argues that extending the ECO analysis to such "indirect" investments" would: (1) hamper the "privatization and development of telecommunications systems around the world," and (2) not "encourage foreign governments to open their communications markets'".³ Therefore, TLD asserts the Commission should only apply the ECO test to routes where a foreign carrier has a 25% or greater investment in the U.S. foreign-affiliated carrier.

It is difficult to believe that the implementation of procompetitive policies in the U.S., such as those adopted in the Market Entry Order, would have deterred Telefonica Internacional (TI), from investing in developing markets in Venezuela, Chile and Argentina, for example. Indeed, if TI is intent on targeting investments in developing countries, it is entirely rational to condition its entry into the U.S. on its willingness to subject itself to regulatory policies to pry open foreign markets and make them available to competing U.S. carriers. If the Commission's decision would have deterred TLD from participating in these Latin American privatizations--on the grounds that these routes would not pass muster under the ECO analysis and, as a result, would foreclose TLD from obtaining additional Section

² Market Entry Order at ¶ 87.

³ TLD's Petition raises other in support of its position that have previously been considered and rejected by the Commission. See, e.g., Market Entry Order at ¶ 106. No further comment is necessary herein.

214 authority to provide international services on any U.S.-foreign route)--other potential investors would not have been similarly disincented from investing in developing countries' infrastructures.

While the Commission correctly recognizes that it has "no direct influence over the scope of liberalization in foreign markets,"⁴ foreign carriers are given powerful incentives to encourage their governments to liberalize markets so that they may be able to compete more effectively in the international marketplace. Thus, the FCC's authorization of the Deutsche Telecom/France Telecom's investment in Sprint was conditioned on those entities' promises to liberalize their markets for telecommunications services. This illustrates that foreign carriers perceive these non-controlling investments to be very important to their strategic plans, and it demonstrates they possess the motivation to adopt regulatory reforms that will encourage competition. Moreover, the increasing number of global alliances, joint ventures and mergers involving carriers holding dominant market positions in foreign countries creates a substantial possibility of third country leveraging, or other anti-competitive practices⁵

MCI thus supports the Commission's ongoing efforts to open foreign markets to U.S. international carriers by applying its "effective competitive opportunities" test, and it fully endorses

⁴ Market Entry Order at ¶ 82.

⁵ Id. at ¶ 13.

the approach that TLD is seeking to overturn. The new entry standard is essential because, as the Commission observed, "effective competition" between U.S. and foreign carriers "will [not] occur if foreign carriers that continue to hold market power in foreign markets are allowed unlimited access to the U.S. market."⁶ Finally, the effective competitive opportunities test is clearly an appropriate exercise of the Commission's authority under Sections 214 and 310(b)(4) of the Communications Act, TLD's contentions to the contrary notwithstanding.

IV. CONCLUSION

For the reasons stated above, the Commission should deny TLD's petition for reconsideration.

Respectfully submitted,

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⁶ Id. at ¶ 1.

CERTIFICATE OF SERVICE

I, Kimberly Nealon, do hereby certify that the foregoing "OPPOSITION" was served this 29th day of February, 1996, by first-class mail, postage prepaid, on the following parties listed below:

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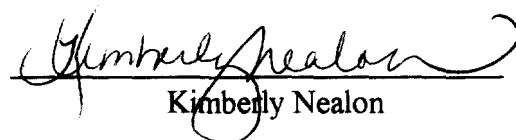
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